

REMARKS

Applicants appreciate the courtesies extended by Examiner Nina Bhat during an interview on August 20, 2003 with Jean Archambault and Applicants' representative, Jeffrey A. Wolfson, and the written acknowledgement that the claims are free of the prior art. The comments appearing herein are substantially in accord with those presented and discussed during the interview.

Claims 1-20, as amended, are pending for the Examiner's review and consideration. Claim 1 has been amended to clarify that components of the frozen dessert are arranged so that the sauce absorbs the microwaves (*See, e.g.*, Specification at page 4, lines 7-10). Also, Applicants respectfully point out that the core is a frozen confection, and that ice cream is one of the preferred core embodiments (*See, e.g.*, claim 5). Although Applicants believe the word "broth" in claim 9 to be a translation error, the language has been canceled from this dependent claim to expedite prosecution of this matter. Claim 13 has also been amended to provide antecedent basis for the core of claims 14-15. Claim 13 now clarifies that the frozen confection is the core. No modification in scope, either to enlarge or narrow the scope, is intended by any of these amendments. These amendments do not add any new matter, and as such application and claims are in condition for allowance at this time.

Claims 9 and 14-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite on page 2 of the Office Action. Claim 9 uses the term "broth," which is stated to be confusing in connection with a frozen confectionery product. Applicants have removed this improperly translated word to expedite prosecution, as claim 9 is dependent and the subject matter would still be covered by the "frozen confectionery" language of the independent claims. Claims 14-15 use the language "the core," which lacked an antecedent basis. Applicants appreciate the Examiner noticing this issue, and have amended claim 13 to overcome this deficiency. As such, Applicants respectfully submit that the rejection under 35 U.S.C. § 112, second paragraph, has been overcome and should be withdrawn.

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,971,816 to Clark et al. ("Clark") in view of U.S. Patent No. 5,977,531 to Pfister et al. ("Pfister") on pages 2-5 of the Office Action. Clark is stated to disclose a multicomponent ice confectionery product that is spherical or cylindrical and has a sauce where the inner center is heated by microwave energy and the outer confection is still frozen. Clark is conceded on page 4 to not teach the orientation of the claimed frozen dessert, the insulating characteristics of the semi-fluid composition, and the insulation completely

surrounding the core, as well as not teaching the specific packaging recited in various dependent claims. Pfister is relied on to allegedly teach induced thermal inversion packaging with an antenna to receive microwave energy that is converted to electricity to provide resistive heating in the package. Pfister is stated to have an outer layer of ice cream and an inner core of chocolate with a waffle material in between.

Clark discloses a multicomponent ice confection product that includes a spherical center enclosed in a shell with a coating of couverture. After heating in a microwave oven, the center is heated to at least 25°C, while the shell remains frozen. The shell may be oriented on a cake or biscuit. Pfister discloses a method and device for heating a food product in a microwave oven. The device is a package that includes an antenna that receives the microwave energy and converts the energy into electrical current which is directed into the food product by two probes to resistively heat the food product. In this way, the center of the food product may be heated, while the exterior is shielded from the microwave energy and may remain frozen.

Both Clark and Pfister are directed to a frozen confection that is the *opposite* of what is claimed in the present invention. They each disclose a frozen layer surrounding a core that is heated. In the present claims, the confectionery core is frozen and the outer layer of sauce is heated, with layers of biscuit and semi-fluid coating providing microwave insulation therebetween. This configuration is not disclosed or suggested by Clark or Pfister.

Even if a motivation to combine Clark and Pfister and a reasonable expectation of success in achieving the present invention existed at the time of the invention, the combination of Clark and Pfister fails to teach the claimed invention. This prior art, even when combined, fails to teach an outer layer of sauce that absorbs the microwave energy, and fails to teach that the frozen confectionery core can remain frozen during microwaving. The art of record also fails to teach a semi-fluid coating and a biscuit that together completely surround the frozen confectionery core.

The claimed invention is not merely an optimized-type rearrangement of known layers, but rather it provides several surprising and unexpected advantages compared to the cited prior art. Importantly, the present frozen dessert can advantageously be cooked or heated in either a conventional oven or a microwave oven. Because conventional ovens heat from the outside inwards, the same effect can be achieved with the present invention when heating the claimed frozen desserts in a microwave. The prior art of record will not cook in the same fashion in a regular oven, since the ice cream of Clark and Pfister is an outer

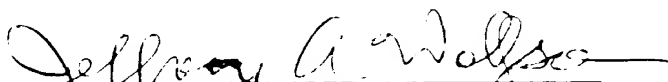
layer. Instead, it would melt leaving a messy, gooey product that is completely different from the claimed invention.

Additionally, the claimed invention advantageously permits a consumer to have warmed sauce available when consuming the frozen dessert. On the contrary, the prior art products require a consumer to break open the frozen shell to locate "sauce", e.g., in the form of heated chocolate or the like. Many consumers, particularly those with disabilities or lesser manual dexterity, find it difficult to use a fork or spoon to crack open a shell of frozen material, such as those taught by Clark or Pfister. The present invention can surprisingly and unexpectedly avoid such a problem. Furthermore, the present invention provides the sauce in an external area so that consumers may be able to visually check to determine that the inventive frozen dessert product is sufficiently warmed. When enough energy is provided to the frozen dessert, the sauce will decrease in viscosity and begin to flow. This can permit a simple, visual check to confirm the product is ready to consumer. The prior art, however, fails to provide any visual cues to confirm that the product is sufficiently warmed. For at least these reasons, Applicants respectfully submit that the rejection under 35 U.S.C. § 103(a) has been overcome and should be reconsidered and withdrawn since no *prima facie* case of obviousness has been shown on the record.

In view of the above, all rejections have been overcome and should be withdrawn. Accordingly, the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims.

Respectfully submitted,

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Jeffrey A. Wolfson (Reg. No. 42,234)
For: Allan A. Eanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP
CUSTOMER NO. 28765

(202) 371-5770